

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and the following commentary.

I. Status of the Claims

Claims 1-15 and 22-24 were cancelled previously. Claim 16 has been revised to incorporate the salient recitations of claim 21, now cancelled. Claims 30-32 have been added to replace claims 25-27, which also are cancelled.

Although the present action is denoted “final,” entry is appropriate because these amendments are made to cancel claims, to comply with the formality requirements, and to incorporate recitations from an extant dependent claim into its base claim. Upon entry, which is respectfully requested, claims 16-20 and 28-32 will be pending.

II. Claim Objection

The Examiner objected to claims 25-27 for depending from a higher numbered claim, claim 28. Claims 25-27 have been cancelled and replaced by claims 30-32, obviating the stated basis for the objection.

III. Rejection of Claims under 35 U.S.C. § 102(b)

The Examiner maintained the rejection of claims 16-18 and 29 for alleged anticipation by Chou *et al.*, *Science* 250: 1262-66 (1990). Applicants respectfully traverse the rejection.

Without acquiescing to the stated rational of the rejection, Applicants choose to expedite prosecution by incorporating into the recitations of claim 21, which is not subject to this rejection. Accordingly, withdrawal of the rejection is warranted.

IV. Provisional Double Patenting Rejection

A. U.S. Patent Application No. 10/748,233

The Examiner provisionally rejected claims 16-29 for obviousness-type double patenting over claims 7-18 of copending application serial No. 10/748,233. By virtue of the accompanying terminal disclaimer against the '233 application, the provisional obviousness-type double patenting rejection is overcome.

B. U.S. Patent Application No. 11/097,391

The Examiner likewise provisionally rejected claims 16-29 for obviousness-type double patenting over claims 35-39 and 43-46 of copending application serial No. 11/097,391. Applicants respectfully traverse the rejection.

The filing date of the present application, March 1, 2004, predates that of the '391 application, April 5, 2005. Pursuant to MPEP 804 I B1, if "a 'provisional' ... obviousness-type double patenting (ODP) rejection is the only rejection remaining in *the earlier filed of the two pending applications*, while the later-filed application is rejectable on other grounds, [then] the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer" (emphasis added).

Thus, a terminal disclaimer is not required in the event that the Examiner finds that the subject double patenting rejection is the only remaining rejection in the present application.

CONCLUSION

Applicants submit that the present application is in condition for allowance, and they request an early indication to that effect. The Examiner is invited to contact the undersigned directly, should the examiner feel that any issue would benefit from further consideration.

The Commissioner is hereby authorized to charge any additional fees, which may be required under 37 CFR §§ 1.16-1.17, and to credit any overpayment to Deposit Account No. 19-0741. Should no proper payment accompany this response, then the Commissioner is authorized to charge the unpaid amount to the same deposit account. If any extension is needed for timely acceptance of submitted papers, Applicants hereby petition for such extension under 37 CFR §1.136 and authorize payment of the relevant fee(s) to the deposit account.

Respectfully submitted,

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By S. A. Bent

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5404
Facsimile: (202) 672-5399

Stephen A. Bent
Attorney for Applicant
Registration No. 29,768